

REMARKSRequirements for Information

In the outstanding Office Action, the Examiner has required information pursuant to 37 CFR § 1.105. Applicant has referred to § 1.105 and has found no relevant information.

(I) Commercial Databases: Applicant knows of no commercial data base that could be searched for a particular aspect of the invention. On the other hand, Applicant has not performed a search at this time to identify databases. Another domain search has not been performed.

(II) - (VII) None of these sections of § 1.105 exist. The application as filed reflects the methods used by the inventors which is based purely upon their own experience. These are the processes explained in the specification. Therefore, there is no information available which would be covered by §§ (II) - (VII).

The above statement applies not only to the inventors, but to the Assignee of this application.

Prior Office Actions and Responses

The Utsugi '583 reference was first applied to claims 1 - 8 (prior to minor amendment to overcome § 112 problems) in the Office Action dated June 18, 2003. The only change in claims 1 - 8 from June 18, 2003 until the presentation of the claims now before the Examiner were amendments directed to overcoming issues

under 35 USC § 112 which have now been overcome. In the Office Action dated June 18, 2003, there was an additional section entitled "Response to Arguments" which cited numerous case law and arguments with respect to Applicant's arguments filed on April 19, 2003. None of this has been repeated in the current Office Action.

The Examiner's response to Applicant's amendment filed on October 20, 2003 was to drop the rejection based upon Utsugi '583 and to apply other references. Now the Examiner has again relied upon '583. Since the Examiner has not responded to Applicant's previous arguments against '583 presented on October 20, 2003, Applicant repeats these arguments with minor modification herein below.

#### Requirements for Information

In the outstanding Office Action at pages 2 and 3, the Examiner has proceeded under 37 CFR § 1.105 for a requirement for information. Applicant hereby submits with this amendment prior art known to Applicant which Applicant has used in arriving at this invention and prior art that Applicant has become aware of. This prior art includes information relating not only to the subject of make up application, but also computer programing and the like that relates to morphing and averaging.

#### Claim Rejections - 35 USC § 103

In the prior amendments to the claims, Applicant has made it clear that Applicant's invention is directed to surveys by race and obtaining an average face composition of a plurality of races. The enquiries are made by race, and the analysis is made by considering opinions and submitting the analysis as a data for color maps and images of the plurality of races. Still further, in claim 1, Applicant has stated that this is a method for selecting eye shadow and rouge. Eye shadow and rouge selection is disclosed throughout this specification. Applicant wishes the Examiner to note that the terms eye shadow and rouge relate to a term which in Japanese may be referred to as "point make up". This term refers to make up for a selective portion of the face. The term "point make up" has meaning very similar to the known claimed eye shadow and rouge. This was also explained in the Amendment filed October 20, 2003.

The basic concept of Utsugi '583 is very different from Applicant's claimed invention. '583 differs fundamentally from what Applicant's claims as the method for selecting eye shadow and rouge.

The '583 invention is directed to a specific individual and provides a method for cosmetic application which teaches how to apply cosmetics to that individual in order for this individual to obtain a face which the individual considers beautiful. On the other hand, in Applicant's claimed method, there is not a targeting of a specific individual, but rather a targeting of

race. Applicant's method is race specific. Applicant's method is for providing color information in order to choose what color of eye shadow and rouge would generally be suitable for a different person's skin and eye color based upon that person's race. A method for providing color information in order to choose what color of eye shadow and rouge would generally be suitable for Caucasian skin and eye color is claimed. Similarly, selection for Asian people and black people can be made based upon racial characteristics as determined by Applicant's color maps created by gathering information from different races of people by enquiry (survey). Information obtained as data is sorted by each race and each race's preference. The data obtained is used to decide color range of eye shadow and rouge as a "point make up" based upon a skin color and eye color of each race. Applicant's method is not based selection by the individual as occurs in '583.

'583 instead is a different concept of the approach to cosmetic application. '583 is an interaction between the subject person on whose face the cosmetics are to be applied, and averages or preferred faces whose origin is not disclosed. '583 performs a morphing process where the average or "talent" type face (movie star, entertainer) is morphed with that of the subject in order to achieve a face which might be considered to be more desirable than the subject's own face (see bottom of column 3, line 65 through column 4, line 10).

Stated another way, '583 does not teach how to determine a desirable face based upon race and race inquiry. It asks the subject what the subject considers desirable. Applicant's claim 1 on the other hand, is directed to a method of obtaining desirable color maps which can indeed lead to the generation of such a desirable characteristic (color maps, color image maps, etc. which are considered desirable as a result of survey).

Initially, the Examiner should note that Applicant's now claimed invention is a method for selecting suitable eye shadow and rouge cosmetics which in the first sub paragraph requires a survey of average facial features of skin color, lip color and eye color of a plurality of races by a survey. Review of '583 shows that the word "survey" does not appear in this patent. Instead, '583 does not survey at all, and, instead, refers to "model faces" or "faces of preferred talents or actresses or actors, or 'beautiful faces' originated from the average theory" (see column 1, lines 66 through column 2, line 1). Throughout the '583 specification, there is reference to such averages, such as found at column 3, lines 10 - 13, column 3, lines 17 - 18, column 3, lines 44 - 47, and column 7, lines 10 - 17. However, in '583 there is no disclosure of where these averages faces come from and there is certainly no suggestion that the average face is a composition by a survey of average facial features of a plurality of races, including skin color, lip color and eye color of a plurality of people. The survey referred to by Applicant is such

as that disclosed in Applicant's specification beginning at page 5, line 15 through page 6, line 2 (points 1 - 17) and page 6, lines 8 - 25 (points 1 - 17).

Next, in Applicant's amended claim 1, it is required that there be performing of inquiries of a plurality of different races of people for the average face on which cosmetics are furnished. While, '583 refers to race, in column 8, lines 18 - 20, there is no discussion of a survey or inquiries among a plurality of different races for the average face on which various cosmetics are furnished and receipt of resulting opinions of these people (races). Instead, all that column 8 refers to is:

"A desirable face is selected from the model faces by using an average face for each race, each era, each personality, each work or the like or the name of a specific talent, or is selected from various model faces sequentially displayed on the screen of the monitor." (column 8, lines 18-22) (Emphasis added)

There is no teaching in column 8 or elsewhere in '583 that surveys are to be taken of individuals of a plurality of races to perform inquiries, especially inquiries of different races of people to determine the claimed opinions which are analyzed to obtain color and image maps as claimed (claim 1, last 5 lines).

Claim 1 requires analyzing the resulting opinions and submitting the analysis result as data for color maps and image maps. The claim to color of maps based upon opinions of a plurality of races is totally lacking in '583. Initially, it is

requested that the Examiner refer to Applicant's Figures 5 - 10 which show such color maps. The color maps as taught by Applicant show acceptable ranges of tone and hue for rouge (5) for different races of people. Similarly, a different map is shown in Figure 6 for the different types of people and it relates to tone and hue. Figures 7, 8 and 9 still further show maps relating tone and hue to different colors of eyes and, therefore, different eye shadow considerations. Finally, Applicant's Figures 10 and 11 show yet further arrangements of color maps which consider features such as fresh, active, elegant and gentle as a function of Caucasian, Asian and black skin people. Still further, Figure 11 shows additional color maps which relate to eye shadow and eye color. Review of '583 shows no teaching whatsoever of creation of the claimed color maps. There are no such color maps in '583. Instead, all '583 shows is faces without any teaching or suggestion spectrum of color as a function of race (inquiries by race about an average face composition of a plurality of races) or other color features of the faces, such as eye color image (eye shadow and rouge selection). '583 cannot show such a map on a face because a face must have only one color at a time.

#### Claim 2

'583 does not disclose any inquiries on a race by race basis. '583 simply does not recognize that different races may have different tastes or color preference. With respect to claim 2,

the Examiner relies upon column 8, lines 8 - 22. However, the cited paragraph states:

"...as model faces are used image data of faces of popular talents, actresses or actors or the like, or standard good-looking faces prepared in association with human races or the like, which are stored in the storage device (2)."

This is not a disclosure of a survey by race to obtain color maps.

### Claim 3

Initially, the Examiner should note that column 3, lines 1 - 64 discloses nothing like the color maps claimed and disclosed by Applicant. Instead, column 3 of '583 is a method where the make up instructor instructs a subject person on how to put make up, for example a desirable face may be determined by asking the subject person about preferences. This is an inquiry of the subject person, not color maps based upon inquiries in accordance with surveys of different eye colors of a plurality of people as set forth in claim 3. Column 3, line 56 refers to selection of colors of eye shadows. However, '583 does not in any way relate the different color to maps which are obtained in accordance with Applicant's method. Applicant would concede that individual selection of colors of eye shadows is known. This is done every day when a customer buys makeup. This is all that is disclosed in column 3 of '583.



In paragraph C, page 5 and page 6, the Examiner states that the remainder of claim 2 repeats the same limitations of claim 1. It is believed that the Examiner is referring to claim 3. However, claim 3 is distinguished from claim 1 in that claim 1 refers only to color maps, while claim 3 is color relating to eye color as shown in Applicant's Figures 7, 8 and 9 which relate eye shadow to eye color. The detail of Figures 7, 8 and 9 is simply not found in claim 1.

#### Claim 4

Utsugi's horizontal and vertical axes shown in Figure 1 are part of a diagram for explaining one example of image processing in a facial image modifying method. These are coordinates of the face. On the other hand, claim 4 relates to an image map showing on a horizontal axis hues and tones along a longitudinal axis. This is found in Applicant's Figures 6, 7, 8 and 9. The Examiner should note that the relationship is between tone, hue and type of person. The maps Applicant claims and teaches have nothing to do with the shape of a person's face or a coordinate of a person's face on an x/y axis as shown in '583. The x/y axes and the coordinates shown in '583 Figure 1 are for changing or morphing from one image to another, and are not color maps as claimed which are prepared by analyzing results of opinions and submitting analysis results as color maps and image maps (claim 1). In claim 4 Applicant states that the color maps comprise charts having

horizontal axes and longitudinal axes showing hues and tones. This is not the axes of Figure 1 which are facial dimensions. Applicant respectfully traverses that the remainder of claim 4 repeats the limitations of claim 1. The terms "horizontal axis" and "longitudinal axis" are not found in claim 1.

#### Claim 5

Here the Examiner argues that active-gentle or fresh-elegant (which are subjective opinions of the plurality of person surveyed) are disclosed in '583. Utsugi's hue and brightness, as pointed out above, do not relate to the subjective opinion data of the claimed survey in this claim. Utsugi, as pointed out above, is related to interaction between an instructor and a person putting on makeup, not the creation of color maps comprising charts having and horizontal axes expressing an image of "active and gentle" or longitudinal axes expressing an image of "fresh-elegant".

Still further, there is no suggestion in '585 of the limitations of claim 5. The Examiner argues that using charts to display changes in color is a technique typically used. However, the Examiner provides no teaching of the methods set forth in Applicant's claim. The Examiner's citation of Utsugi '583, column 9, lines 8 - 11 relates to color data for segmented areas acquired. This is based upon segmented areas of the face or area,

and has nothing to do with color maps as set forth in claim 5.  
There is simply no suggestion of Applicant's claimed invention.

Claim 6

The morphing program referred to in Utsugi (column 7, lines 1 - 55) is used in a different way than the morphing program of that of Applicant. Utsugi's morphing program in column 7 is related to morphing facial features from an original face (M) and shifted toward the corresponding points of the desirable face (T) by morphing program. On the other hand, Applicant's morphing as set forth is for morphing computer graphing methods (graphing is initially referred to in claim 1) as an average face composition by a survey of average facial features, skin color, lip color and eye color of a plurality of people. In Applicant's claims, it is not important, and Applicant does not claim morphing from one image to another. Instead, Applicant uses morphing for the average.

'583 describes the image processing of Figure 1 as follows:  
"The image processing is executed by a program which employs an image processing scheme like morphing or twining. Specifically, the coordinate values of facial constituents, such as eyebrows, eyes, a nose and a mouth, of both an original face image M and a desirable face T, and the coordinate values of bright and dark patterns of each face are acquired as shown in Fig. 1, for example, and the original facial image M is mixed with and transformed toward the desirable face T based on those coordinate values."  
(column 7, lines 17-26)

This description of morphing or twining is the disclosure of '583. This description also shows that Figure 1 has nothing to do with image mapping. Figure 1 is a description of the morphing or twining and transformation toward the desirable face (T) based upon coordinate values.

The Examiner should also note that morphing is described again as a transformation from one face to another in column 7, lines 30 - 40. Therefore, although '583 and the instant application use morphing technology, '583 does not use morphing technology as does Applicant. Applicant claims morphing technology as part of the graphing method wherein there is a survey used to obtain the graphing. In contrast, '583 uses morphing for change of features of one desirable feature or "talent" to match those desired by the subject person.

#### Claims 7 and 8


These claims are directed to the "important points" and as pointed out above, this has nothing to do with coordinate values. In column 7, lines 15 -27 of '583, there is discussion of coordinate values of facial constituents and there positions. However, these values relate to the desirable face (T), not the creation of the average face, as set forth in both claims 7 and 8. The description of desirable face is at column 7, lines 10 - 16 where it is based upon models or average theory.

Applicant's Disclosure

The Examiner should note that Applicant's disclosure Figure 1 shows the process of surveying and generating of average faces (such as averages faces 1, 2, 3 and 4) based upon different types of people (Caucasian (1), black (2), Japanese (3), or Asian (4)). These drawings show the important points referred to in claims 7 and 8.

In view of the foregoing, it is respectfully submitted that the application is now in condition for allowance, and early action in accordance thereof is requested. In the event there is any reason why the application cannot be allowed in this current condition, it is respectfully requested that the Examiner contact the undersigned at the number listed below to resolve any problems by Interview or Examiner's Amendment.

Respectfully submitted,

  
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